

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association or subsidiary holding company may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, provided that such persons or plans provide written notice to the OTS at least 30 days prior to the stock issuance. Subsidiary savings associations and subsidiary holding companies may issue stock to such persons only in accordance with § 575.7.

(f) *Restrictions on indemnification.* The provisions of § 545.121 of this chapter shall apply to mutual holding companies in the same manner as if they were federal savings associations.

(g) *Restrictions on employment contracts.* The provisions of § 563.39 of this chapter and any policies of the OTS thereunder shall apply to mutual holding companies in the same manner as if they were savings associations.

(h) *Applicability of rules governing savings and loan holding companies.* Except as expressly provided in this part, mutual holding companies shall be subject to the provisions of 12 U.S.C. 1467a and 3201 *et seq.* and parts 563e, 574, 583, and 584 of this chapter.

[58 FR 44114, Aug. 19, 1993, as amended at 60 FR 66720, Dec. 26, 1995; 63 FR 11365, Mar. 9, 1998]

§ 575.12 Conversion or liquidation of mutual holding companies.

(a) *Conversion*—(1) *Generally.* A mutual holding company may convert to the stock form in accordance with the rules and regulations set forth in part 563b of this chapter.

(2) Exchange of savings association stock. Any stock issued pursuant to § 575.7 by a subsidiary savings association or subsidiary holding company of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the parent mutual holding company in connection with the conversion of the parent mutual holding company to stock form. The parent mutual holding company and the subsidiary holding company or savings association must demonstrate to

the satisfaction of the OTS that the basis for the exchange is fair and reasonable.

(b) *Involuntary liquidation*—(1) The OTS may file a petition with the federal bankruptcy courts requesting the liquidation of a mutual holding company pursuant to 12 U.S.C. 1467a(o)(9) and title 11, United States Code, upon the occurrence of any of the following events:

(i) The default of the resulting association, any acquiree association, or any subsidiary savings association of the mutual holding company that was in the mutual form when acquired by the mutual holding company;

(ii) The default of the parent mutual holding company or its subsidiary holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock or subsidiary holding company stock pursuant to § 575.11(b).

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company or the stock holders of the subsidiary holding company in accordance with the charter of the mutual holding company or subsidiary holding company.

(3) If the FDIC incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company and that mutual holding company is liquidated pursuant to paragraph (b)(1) of this section, the FDIC shall succeed to the membership interests of the depositors of such savings association in the mutual holding company, to the extent of the FDIC's loss.

(c) *Voluntary liquidation.* The provisions of § 546.4 of this chapter shall apply to mutual holding companies in the same manner as if they were federal savings associations.

[58 FR 44114, Aug. 19, 1993, as amended at 63 FR 11366, Mar. 9, 1998]

§ 575.13 Procedural requirements.

(a) *Proxies and proxy statements*—(1) *Solicitation of proxies.* The provisions of §§ 563b.5 and 563b.6 of this chapter (exclusive of § 563b.6(c)(2)(iii), (d), and (e))

shall apply to all solicitations of proxies by any person in connection with any membership vote required under this part. All proxy materials utilized in connection with such solicitations shall be authorized for use by the OTS and shall be in the form and contain the information specified in § 563b.5(d) of this chapter and Form PS, 12 CFR 563b.101, to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are necessary or appropriate under the disclosure standard set forth in § 563b.5(g) of this chapter. Proxies and proxy statements shall be filed in accordance with § 563b.5(e) of this chapter and shall be addressed to the Corporate and Securities Division, Chief Counsel's Office, Office of Thrift Supervision, at the address set forth in § 516.1(a) of this chapter. For purposes of this paragraph (a)(1), the term *conversion* as it appears in the provisions of part 563b of this chapter cited above in this paragraph (a)(1) shall be deemed to refer to *the reorganization or the stock issuance*, as appropriate.

(2) *Additional proxy disclosure requirements.* In addition to all disclosure required by Form PS, all proxies requesting accountholder approval of a mutual holding company reorganization shall address in detail:

(i) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion;

(ii) Whether management believes the reorganization is in the best interests of the association and its accountholders and the basis of that belief;

(iii) The fiduciary duties owed to accountholders by the association's officers and directors and why the reorganization is in accord with those duties and is otherwise equitable to the accountholders and the association;

(iv) Any compensation agreements that will be entered into by management in connection with the reorganization; and

(v) Whether the mutual holding company intends to waive dividends, the implications to accountholders, and the reasons such waivers are consistent

with the fiduciary duties of the directors of the mutual holding company.

(3) *Nonconforming minority stock issuances.* Savings associations proposing non-conforming minority stock issuances pursuant to § 575.7(d)(6)(ii)(2) of this part must include in the proxy materials to accountholders seeking approval of a proposed reorganization an additional disclosure statement that serves as a cover sheet that clearly addresses:

(i) The consequences to accountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and

(ii) Any intent by the mutual holding company to waive dividends, and the implications to accountholders.

(4) *Use of "running" proxies.* A mutual savings association or mutual holding company may make use of any proxy conferring general authority to vote on any and all matters at any meeting of members, provided that the member granting such proxy has been furnished a proxy statement regarding the matters and the member does not grant a later-dated proxy to vote at the meeting at which the matter will be considered or attend such meeting and vote in person, and further provided that "running" proxies or similar proxies may not be used to vote for a mutual holding company reorganization, mutual-to-stock conversion undertaken either by a mutual savings association or a mutual holding company or any other material transaction. Subject to the limitations set forth in this paragraph, any proxy conferring on the board of directors or officers of a mutual savings association general authority to cast a member's votes on any and all matters presented to the members shall be deemed to cover the member's votes as a member of the mutual holding company and such authority shall be conferred on the board of directors or officers of a mutual holding company.

(b) *Applications pursuant this part.* Except as provided in paragraph (c) of this section, any application, notice or certification required to be filed with the OTS pursuant to this part shall be filed in accordance with § 516.1 of this chapter.

(c) *Reorganization Notices and stock issuance applications*—(1) *Contents.* Each Reorganization Notice submitted to the OTS pursuant to § 575.3(b) of this part and each application for approval of the issuance of stock submitted to the OTS pursuant to § 575.7(a) of this part shall be in the form and contain the information specified by the OTS.

(2) *Filing instructions.* Any Reorganization Notice submitted pursuant to § 575.3(b) of this part shall be filed in accordance with § 516.1 of this chapter. Any stock issuance application submitted pursuant to § 575.7(a) of this part shall be filed in accordance with § 563b.8 of this chapter.

(3) *Public notice, agency reports, and related matters.* (i) Sections 563.22(e)(1), (e)(2), (e)(3), and (e)(4) of this chapter shall apply to all mutual holding company reorganizations.

(ii) Public notice published pursuant to paragraph (c)(3)(i) of this section shall be published in a manner that is conspicuous to the average reader and shall be made substantially in the form indicated in this paragraph (c)(3)(ii). Such notice shall also be prominently posted in each office of the association for a period beginning on the date of the newspaper notice and ending on the date of the association's membership meeting.

ANNOUNCEMENT OF FILING OF NOTICE OF MUTUAL SAVINGS AND LOAN HOLDING COMPANY REORGANIZATION

This is to inform the public that _____, located in _____, filed [intends to file] application materials with the Office of Thrift Supervision (the "OTS") on _____ [insert date] advising the OTS of its intent to reorganize into the mutual holding company format pursuant to 12 CFR part 575 ("Reorganization Notice").

This public notice will appear at approximately one-week intervals over a thirty [ten] day period beginning _____ [insert date] and ending _____ [insert date].

Anyone may submit written comments in favor of or against the proposed reorganization and in so doing may submit such information as he or she deems relevant. Such comments and information must be sent to the Regional Director at the following address: _____. Three additional copies of such comments and information must also be sent to the Applications Filing Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Such comments and information must be submit-

ted within thirty [ten] calendar days of the date on which this public notice was first published, as indicated in the preceding paragraph. Up to an additional ten calendar days may be granted by the Regional Director to submit such comments and information upon a showing of good cause if a written request is received by the Regional Director within the initial thirty [ten] day period specified above. Failure to submit written comments on a timely basis objecting to the Reorganization Notice may preclude the pursuit of any administrative or judicial remedies.

You may inspect the non-confidential portion of the Reorganization Notice and non-confidential portions of all comments and information filed by the public in response to the Reorganization Notice by contacting the Regional Director or the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. If you have any questions concerning these procedures, contact the Regional Director at (_____) _____ or the Information Services Division at (202) 906-____.

(iii) Promptly after publication, the association shall file copies of each notice and a publisher's affidavit of publication in the same manner as specified in paragraph (c)(2) of this section.

(iv) If any Reorganization Notice includes an acquiree association, the publication requirements of this paragraph (c)(3) shall be fulfilled both by the reorganizing association and by the acquiree association and the first paragraph of the form of notice set forth in paragraph (c)(3)(ii) of this section shall be replaced with the following paragraph:

This is to inform the public that _____, located in _____, and _____, located in _____, filed [intend to file] application materials with the Office of Thrift Supervision (the "OTS") on _____ [insert date] advising the OTS of their intent to join together to reorganize into the mutual holding company format pursuant to 12 CFR part 575 ("Reorganization Notice").

(v) Upon receipt of a Reorganization Notice, the OTS shall notify persons whose request for announcements under § 563e.6 of this chapter have been received in time for such notification. The OTS may also notify any other persons who might have an interest in the proposed reorganization.

(vi) Disclosure of any part of a Reorganization Notice or any comments by the public thereon shall be made only

in accordance with paragraph (f) of this section.

(4) *Public comment.* Comments by the public shall be submitted only as provided in this paragraph (c)(4) or as requested by the OTS. Within thirty (or, if an emergency exists within the meaning of § 563.22(d)(3) of this chapter, ten) calendar days of the date of publication of the first notice required by paragraph (c)(3) (i) and (ii) of this section, or up to forty (or, if an emergency exists, twenty), calendar days after such date if within the initial period an extension is requested in writing for good cause shown, anyone may file comments in favor of or against a Reorganization Notice and in so doing may submit such information as he or she deems relevant. Comments received after the comment period, except as requested by the OTS, unverified accusations, or materials pertaining to a Reorganization Notice or public comment that the commenter is unwilling to have disclosed to the party making such submission shall not be part of the record and need not be considered by the OTS. Comments shall be filed in the manner and in the locations provided in paragraph (c)(3)(ii) of this section.

(d) *Amendments.* Any association or mutual holding company may amend any notice or application submitted pursuant to this part or file additional information with respect thereto upon request of the OTS or upon the association's or mutual holding company's own initiative.

(e) *Time-frames.* All Reorganization Notices and applications filed pursuant to this part shall be processed in accordance with § 516.2 of this chapter. Any related approvals requested in connection with Reorganization Notices or applications for approval of stock issuances (including, without limitation, requests for approval to transfer assets to resulting associations, to acquire acquiree associations, and to organize resulting associations or interim associations, and requests for approval of charters, bylaws, and stock forms) shall be processed pursuant to the procedures specified in this section in conjunction with the Reorganization Notice or stock issuance application to which they pertain, rather

than pursuant to any inconsistent procedures specified elsewhere in this chapter. The approval standards for all such related applications, however, shall remain unchanged. The review by the OTS of proxy solicitation materials, including forms of proxy and proxy statements, and of any other materials used in connection with the issuance of stock under § 575.7 of this part shall not be subject to the applications processing time-frames set forth in § 516.2 of this chapter.

(f) *Disclosure.* The rules governing disclosure of any notice or application submitted pursuant to this part, or any public comment submitted pursuant to paragraph (c)(4) of this section, shall be the same as set forth in § 574.6(f) of this chapter for notices, applications, and public comments filed under part 574 of this chapter.

(g) *Supervisory cases.* The provisions of paragraphs (c)(3), (c)(4) and (f) of this section may be waived by the OTS in connection with transactions approved, or not disapproved, by the OTS for supervisory reasons.

(h) *Appeals.* Any party aggrieved by a final action by the OTS which approves or disapproves any application or notice pursuant to this part 575 may obtain review of such action only by complying with 12 U.S.C. 1467a(j).

(i) *Federal preemption.* This part 575 preempts state law with regard to the creation and regulation of mutual holding companies.

[58 FR 44114, Aug. 19, 1993, as amended at 59 FR 22735, May 3, 1994; 59 FR 44627, Aug. 30, 1994; 59 FR 61262, Nov. 30, 1994]

§ 575.14 Subsidiary holding companies.

(a) *Subsidiary holding companies.* A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings association subsidiary. The formation and operation of the subsidiary holding company may not be utilized as a means to evade or frustrate the purposes of this part 575 or part 563b of this chapter. The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the OTS.